

Several Queries

Relating to

An ACT of PARLIAMENT

Made in the

Second and Third Years

Of Her most

Sacred MAJESTY's Reign,

ENTITLED,

An ACT

*For the Discharge out of Prison such Insolvent Debtors
as shall Serve, or procure a Person to Serve in
Her Majesty's Fleet or Army.*

243 Anne, Public Acts, c. 10.

Sent in a LETTER, by a Gentleman in the Country to
his Friend, a Counsellor at Law in *London*. With his
Answer thereto, and *Opinion* thereon.

LONDON: Printed in the Year 1704.

General Orders

An Act of Parliament

In the

Second and Third Years

Of her Majesty's

Sacred Majesty's Reign



AN ACT

For the better regulation of the

the said

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the said

The LETTER.

SIR,

15 Septem. 1704.

THE many Doubts and various Scruples of some Persons in this County, appears to have raised such great Difficulties in putting a late Act of Parliament in Execution, Intituled, An Act for the Discharge out of Prison, such Insolvent Debtors as shall Serve, or procure a Person to Serve in Her Majesty's Fleet or Army; as may (if not rectified) wholly obstruct the great Charity and Mercy design'd for the Poor, and Raising Men to Serve the Kingdom, at this time intended thereby, and render the whole Act Precarious, and almost Useless; I therefore desire you would Peruse the Inclosed Queries, and as soon as possible return them with your Opinion thereon, and it will greatly Oblige your Friend and Servant,

C. C.

Several QUERIES, &c.

What was the real Design and Intent of the said Act?

To Deliver the Insolvent Debtors out of Loathsome Goals, and making their Persons Free from any Debt Contracted before the 8th Day of November, 1703; and so rendring them Useful and Serviceable to the Kingdom, as by the said Act directed; but not to Discharge any Debts.

Query.

Answer.

Debts, or any Security for the same; and therefore leaves all the Estate Real and Personal, which even such Discharged Prisoner shall have, liable to Pay and Satisfy all such discharg'd Prisoners Debts.

Query. What is meant by the Words *Actually a Prisoner*, in the said Act? And what is sufficient to satisfy the Justices of such Imprisonment?

Opinion. I Conceive these Words, *Actually a Prisoner*, intends such Persons who were really Prisoners, Charg'd in any Goal before the 8th of November, 1703. and not Discharg'd till by the Act, tho' not actually under the Key; and the Justices granting such Prisoner a Summons for his Creditors, and to the Goaler to bring such Prisoner to Court; and the Goaler or his Officers bringing him and the Copy of his Causes into Court in Obedience thereto, is sufficient to satisfy the Court the Prisoner is within the Act, unless it be proved he was not a Prisoner in the said 8th day of Novem. 1703. which Proof lieth on the Creditors

Reason. The Words in the last Act for the Relief of Poor Prisoners for Debt, which this Act recites, made in the First Year of Her Present Majesty's Reign relating to Imprisonment, were as followeth, viz.

Opinion. That where any Person who *Was* actually in the Custody of the Goaler or Keeper of such Prison or Prisons, and not within the Rules of the Kings Bench or Fleet. Such Prisoner were to be Discharged, and certainly if such Imprisonment had been Intended in this Act, it would have been incerted.

Query. What is the Intent of the Words in the said Act, *Where any Person who shall be found or become so Poor, &c.*

Opinion. I Conceive, the word *Where* relates to the place where the Person shall be found, or become Poor as in the Act, and not the Place where such Person was a Prisoner on the 8th day of Novem. 1703.

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By a true Grammatical Construction, the word *Where* must relate to the Place the Prisoner is found Poor in, and Petitions ; and if it were otherwise, any Creditor might prevent his Debtors being Discharg'd, by removing him out of any County, or other Prison where he was a Prisoner on the 8th of Novem. 1703. either to the *Queen's-Bench* or *Fleet*, or from the *Fleet* to the *Queens-Bench*, or *Queen's Bench* to the *Fleet*, and then the Prisoner cannot be Discharged in any Place.

Reason.

Whether the Justices, by the said Act, are Impower'd to Summon all the Prisoner's Creditors, or only such at whose Suit the Prisoner stands Charg'd.

Query.

I Conceive, the Justices can only Sammons such Creditors at whose Suit the Prisoner stands Charg'd ; It being intended for the Benefit of the Prisoner, and their Expedition in being Discharg'd, if so Poor, as in the said Act signified, from all Debts before the 8th of November 1703.

Opinion.

Whether if a Prisoner is discharg'd, pursuant to the said Act, he is discharg'd only from such Creditors as were Summon'd, and in his Duplicate, or from all his Creditors, for any Debt Contracted before the 8th of November 1703.

Query.

I Conceive, That when a Prisoner, by reason of his Poverty, is Discharg'd by the said Act, and hath Listed himself, or procur'd one to List in his stead, to serve in Her Majesty's Fleet or Army, his Person shall be free from Every Debt Contracted before the 8th of November 1703, as well of such Creditors as were not Summon'd, as those that were, be the Debt any Summ whatsoever.

Opinion.

Otherwise the Act wou'd prove a Snare and Mischief to the Poor Prisoners, instead of securing them the Relief and Benefit intended them thereby.

The Words in the said Act, And the Person of such Prisoner or Prisoners shall be for ever free, whether a

Prisoner on *Heasn* Process, or in Execution for any Debt, (that is at the time of his Discharge) if Contracted on or before the said 8th Day of November, 1703. are very Plain, Full, and Comprehensive, and it cannot be imagined (the Intent of the said Act being to set at Liberty Insolvent Debtors, and thereby Raise Men for Her Majesty's Army and Fleet) that such Persons Discharg'd should be left liable to be again Arrested, and detained in Prison for any Debt Contracted before the said 8th of November, 1703. and so the Prisoner lose his Liberty and Cost in being discharg'd, and finding one to Lift for him, and the Queen Her Soldier.

Query.

If a Prisoner be Discharg'd by the said Act, and afterwards retaken and detained by any Creditor, for a Debt Contracted before the 8th of Novemb. 1703. How such Prisoner may again be Discharged?

Opinion.

I Conceive it very plain by the Act, that any Two or more of the said Justices, *Quorum Unus* of the County, City, Town or Place, where such Prisoner is so Retaken and detain'd, upon the Prisoner's producing the duplicate of his discharge pursuant to the said Act, may again discharge such Prisoner, giving an Appearance if detained upon *Measn* Process, but without, if in Execution.

I likewise Conceive, that the Words in the said Act, *viz.* And the Person of such Prisoner or Prisoners, that is, Prisoners before discharg'd by the said Act shall be for ever free, whether a Prisoner on *Heasn* Process, or in Execution (that is at the time of his discharge) for any Debt if Contracted on or before the 8th of November, 1703. being general words, and so nearly relating to the Liberty of the Subject, seems to intend to add some further Power and Method than Two Justices, of discharging Retaken Prisoners, intended by the said Act to be again discharged, and therefore I presume each Court in *Westminster-Hall*, where such Suits are depending, and each Judge of such Court in his Chamber, may again discharge.

charge such retaken Prisoner on Common-Bail, if required, upon producing a Duplicate of his being discharg'd, pursuant to the said Act before, and his Debt appears Contracted before the said 8th of Novem. 1703. because the said Act having declared the Person of such Prisoner Free, as aforesaid; it will most regularly upon Summons, come before the Judges to determine, whether Special or Common Bail shall be given in such Cases.

If the Person of an Insolvent Debtor, after his being discharg'd, is not as well free from being taken and detained by a Warrant, made out by vertue of a late Act of Parliament, as well as any other Process, for any Debts Contracted before the 8th of Novem. 1703? Query.

I Conceive, such discharged Prisoners Persons are free from being detained by such Warrant, as well as any other Process. For Opinion.

The Warrant is grounded on the Debt due to the Plaintiff, and made out to Retake a Debtor who hath Escaped, and to secure him in Prison till the Debt is paid or satisfied; but this Act being Subsequent, hath by the Words **Such Person shall be free from any Debt**, Exempted the Persons of such discharg'd Prisoner from such Warrant; for it would be hard to imagine a Person should be free from a Debt, and not free from all Process relating thereto. Reason.

What Construction ought to be made of the last Proviso in the said Act but one? Viz. Query.

Provided always that no person or persons by virtue of this Act, shall be Discharged out of Prison, who shall stand Charged and Indebted in more than the Sum of One Hundred Pounds, to any one person, Principal Money and Damages.

I Conceive, this Proviso doth only relate to the Time of the Prisoner's first discharge, for that the Words in the Clause relating to the discharge of any Prisoner, retaken or detain'd afterwards, for any Debt Contracted before the

the said 8th of Nov. 1703. seems to direct it, *viz.* And the person of such prisoner or prisoners (that is, being once discharged) shall be ever free, whether a prisoner or Death process, or in Execution for any Debt, if Contracted on or before the said 8th of Nov. 1703. For if the said Proviso should be taken to extend to both the First and Second discharge of any Prisoner, the Act wou'd be Incoherent and Inconsistent in it self, and of no Use; for to discharge out of Prison a Person one day on Lifting himself, or the Charge of procuring one in his stead, to List in Her Majesty's Service, and leaving him subject to be Arrested and detained the next day, wou'd rather be a Snare and Mischief to such Prisoner, as is before observ'd, than a Benefit, and no way answer the Intent in Raising Men to Serve during the War. Besides,

It cannot be Conceived, that when extream Poverty, which is the only Ground of such Prisoners being discharg'd, and to which the Act hath directed, That the Prisoner should be examined upon Oath, and inflicted such heavy Penalties on any Person who shall forswear themselves on the account of their discharge; That the Person of such Poor Prisoner should not be as well freed from those Creditors Debts, which were Contracted before the said 8th day of Nov. 1703. at whose Suites they were not Charg'd, as those who with Trouble, Care, and Expence had Prosecuted, and recovered their Debts, and had their Bodies in Prison till Payment.

I Conceive, the Words *Principal Money and Damages*, can signify nothing in the Act, if not to distinguish and limit the Nature of the Money due, and so may be taken for the real Debt due from the Prisoner, Exclusive of Interest and Costs, otherwise those Words are wholly superfluous and Useless; and the general Words in the said Act, *stand Charged and Indebted*, would have Included the whole if intended, and have been capable of no doubt, but

but without Question the Compassion of the Parliament Intended such Insolvent Creatures should not stand loaded with Interests or Costs.

Whether if a Prisoner, after being Discharged by the said Act, be after his being discharg'd, Arrested, and detained by a Creditor, not named in his Duplicate of being discharg'd for a Debt Contracted before the 8th of Nov. 1703. it be necessary for such Prisoners to Summon such Creditor, or may be discharg'd, only producing the Duplicate of his first discharge. Query.

I Conceive it not necessary to summon such Creditor, if it can any other way appear, the Debt he then Sues for was Contracted before the said 8th. of Nov. 1703. Opinion.

The words in the Clause in the said Act for the second discharge of Prisoners, *viz.* Then such person or persons so Arrested, shewing a Duplicate that he or she hath been Discharg'd, upon Summoning the person or persons at whose Suit he or she is Detain'd; that is, at such Prisoner's first discharge, for the Reason following. Reason.

The words *Is Detain'd*, is the Present Tense, and relates to the 9th of Nov. the first day of the Sessions the said Act passed, and so Intends the Creditors, at whose Suit such Prisoner was detained at his first discharge, and these words upon Summoning the person at whose Suit he or she is Detain'd, signify no more than it should appear by the Duplicate, that the Prisoner was first regularly discharg'd according to the first discharging Clause in the said Act, upon summoning such Person or Persons at whose Suit he was charged at the time of his first discharge.

For if the Creditor who Arrests a Person after, for a Debt Contracted before the 8th of Nov. 1703. must be summoned by the Prisoner, then the words *is Detained*, should have been *shall be detained*; besides, it is to no purpose that such Creditor should be Summoned, because by the Act he can offer nothing to continue the Prisoner in Custody, as I apprehend; and if a Prisoner discharged,

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and so retaken as aforesaid, must continue in Custody till he can Summon such retaking Creditor, he may lie long enough; for the Plaintiff may be out of England, or so remote and concealed that the Prisoner cannot find him; or if he can, wants Money to defray the Charge of such a Summons, and so is in a Worse Condition than if he had not been discharg'd at all, there being no Method to be found for his being discharg'd again.

Query. *Whether if a Prisoner to be discharg'd by the Act, may List himself in the Fleet or Army, and with what Officer he pleaseth?*

Opinion. I conceive such Prisoners may List in either Service, and in what Ship or Regiment he pleaseth.

Query. *Whether if a Prisoner after being discharg'd by the said Act, and after Arrested for a Debt Contracted before the 8th of Nov. 1703. and Common Bail filed, or Special Bail put in, and a Declaration delivered, such Defendants may Plead the General Issue, and give the said Act and Special Matters (as his Duplicate or discharge,) &c. in Evidence, or must Plead the Act specially at large?*

I must leave the Determination of this Query to the Learned Judgments of the Courts in *Westminster-Hall*, when any such Point shall come judicially before them. But,

Opinion. I Conceive, the said Act Intended such Defendants might plead the General Issue, and give the Special Matters in Evidence; because in the Clause Pag. 274 of the said Act, the word *Prisoner* is mention'd amongst others in the said Act concern'd, to whom it is made Lawful to plead the General Issue in any Action brought, and give the said Act in Evidence. And

The said Act being made for Raising Men to Serve in Her Majesty's Army and Fleet during this present War, may be taken for a General Law, and as such taken Notice of in the Courts in *Westminster-Hall*. And likewise

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The Pleading the said Act Specially will be so difficult and chargeable, that not One in Twenty of such poor discharged Insolvent Debtors will be able to pay for the same, and so lose the Benefit of the said Act; which for the Mercy Intended thereby, ought to have the most favourable Construction put thereon for the Poor Debtors.

SIR,

22. Sept. 1704.

I Have returned your Queries with my Opinion upon them, which is grounded upon a careful Perusing the said Act; and the diligentest Observations I can make (considering the whole Contexture thereof) what Construction ought to be made thereon, and submit to Better Judgments; but am greatly surprized that this Act, made upon the great-Reason, Justice, and Benefit to the Kingdom, should not meet with the most easie and favourable Constructions, and the greatest Assistance and Endeavours in the Execution thereof imaginable, to render it to the utmost effectual in answering the extraordinary Purposes and Advantages Intended thereby, which makes it plainly appear how necessary such Acts sometimes are to prevent Poor Miserable Insolvent Debtors, Languishing and Starving in Noisom Goales, in which they are inhumanely kept by their Merciless Creditors, only in Revenge, and without the least hopes of receiving any part of their Debts by such Usage, which, if Free, might by their Industry, in time pay their Debts, keep their Families which lie on the Parishes, and be useful to the Kingdom; especially when it daily appears that the Covetous Humours of some Creditors hath so hardned their Hearts, that they have no manner of Regard to their Fellow Creatures. For Remedy of which, I remember, some Years since there was an Act of Parliament pass'd to discharge all such Debtors as Absconded for Debt, as well as those in Prison, if they appear'd Insolvent. And I cannot apprehend (since it is a reasonable Custom in foreign Countries, if any Creditor will keep

keep the Person of an Insolvent Debtor in Prison, he ~~must~~ allow him a suitable Subsistence, and on the least default the Prisoner is set free) it would be any Prejudice to this Kingdom, if an Act were pass'd, That all such Persons who have been forc'd to abscond, or are in Prison for any Debt, and really prove themselves Insolvent, to the Persons who shall be Intrusted and Impower'd to Examine the same, should upon Lifting himself, or procuring a Person to Lift for him, in Her Majesty's Service, by Sea or Land, and Summoning the Creditors, and giving a Warrant of Attorney, to such of his Creditors as require the same, to Enter up Judgment, have their Persons free from all Debts Contracted before a Time in the said Act directed, which would be a great Charity to the Poor, and Largely Supply this devouring War, the Nation is Engag'd in, with Men, which to Raise at present seem difficult; and what no Person, of any good Nature, can with Reason Oppose; Or at least, that by some Explanatory Act or Clause, those Insolvent Debtors who have or shall be by this Act discharg'd, be secur'd of that Liberty this Act really intended them. But these are only my present Thoughts, and wholly Submitted to the Great Consideration of Her most Sacred Majesty, and Her Parliament, when They meet.

Your Friend and Servant.

E. G.

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